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Of Counsel:  
Rick Lowerre

April 04, 2016

***Via Certified First Class Mail***

Mr. Richard Hyde, Executive Director  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

**RE: Save Our Spicewood Notice of Intent To Sue The Texas Commission on Environmental Quality for Failure to Provide for Public Participation On The Development of SWP3 Effluent Limitations For TPDES Permit No. 150020741 Issued to Asphalt Inc., LLC, in Violation of Clean Water Act § 101(e).**

**Dear Executive Director Hyde:**

Save Our Spicewood ("SOS"), a group of concerned residents, submits this letter pursuant to Clean Water Act ("CWA" or "Act") Section 505(a)(2) for failures of the Texas Commission on Environmental Quality ("TCEQ") to meet its non-discretionary duties to provide for, encourage and assist in public participation in the development and enforcement of effluent limitations as contained in TPDES Permit No. 150020741 issued to Asphalt Inc., LLC ("Asphalt Inc.").

Under the Act, TCEQ bears a mandatory duty to provide for, encourage and assist in public participation for the development of any "effluent limitation." CWA § 101(e), 33 U.S.C. 1251(e). The term "effluent limitation" includes "any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other

constituents which are discharged from point sources into navigable waters[.]” CWA § 502(11), 33 U.S.C. § 1362(11). In the stormwater discharge permitting context, the provisions of a facility’s stormwater pollution prevention plan (“SWP3”) impose restrictions on the quantities, rates and concentration of pollutants permitted for discharge from a facility. By the plain language of the CWA, the term “effluent limitation” includes *any restriction* on the discharge of contaminants, not merely numeric limitations. *Natural Resource Defense Council et al. v. EPA, et al.* slip. op. at 17 (2<sup>nd</sup> Cir., Oct 5, 2015), *Natural Resource Defense Council, Inc. v. EPA*, 673 F.2d 400, 403 (D.C. Cir. 1982), *Citizens Coal Council v. EPA* 447 F.3d 879, 895 (6<sup>th</sup> Cir. 2006), *Iowa League of Cities v. EPA* 711 F.3d 844, 866 (8<sup>th</sup> Cir., 2013). Thus, the terms of an authorized facility’s SWP3 constitute effluent limitations, and the TCEQ bears a duty to provide for, encourage and assist in public participation in the development of the terms of a SWP3 for any authorized facility.

Contrary to the mandate of the CWA, TCEQ prevented public participation in the development of the SWP3 for the Asphalt Inc. facility. No mailed or published notice of the application was provided, and it also seems that no sign was even posted as required by TXR150000. Thus, the public had virtually no way to know about Asphalt Inc.’s proposed authorization. Asphalt Inc.’s notice of intent (“NOI”) seeking authorization under TXR150000 was submitted on September 21, 2015 with no requirement that the SWP3 for the facility be submitted to the TCEQ, and no requirement that Asphalt Inc. identify a location where a copy of the SWP3 could be examined. TCEQ granted authorization to Asphalt Inc. within mere hours of receiving the company’s NOI. Far from facilitating public participation in the development of Asphalt Inc.’s SWP3, TCEQ frustrated any efforts of the public to provide input by denying

notice of the SWP3, denying access to the SWP3, and denying any time for the public to provide feedback on the SWP3.

By failing to give adequate notice, availability and time for review of the SWP3 during the authorization process for TPDES Permit No. 150020741 issued to Asphalt Inc., LLC, TCEQ failed to discharge its mandatory duties under CWA § 101(e), 33 U.S.C. 1251(e) to provide for, encourage and assist in public participation in the development of any effluent limitation established by the State of Texas.

By this letter, Save Our Spicewood provides TCEQ with notice of their intent to sue TCEQ for its failure to comply with these mandatory duties.

Contact Information

The full name, address and telephone number of a director of the party providing this notice is:

Michael Moore  
1000 Deerpath Way,  
Spicewood, Texas 78669  
(310) 951-8439


The attorney representing Save Our Spicewood in this matter and with whom contact should be made is:

Eric Allmon  
Frederick, Perales, Allmon & Rockwell, PC  
707 Rio Grande, Ste. 200  
Austin, Texas 78701  
(512) 469-6000  
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Perhaps there are, yet, avenues to address this problem short of litigation:

Save Our Spicewood hopes that a lawsuit will not be necessary to resolve this issue, and they are certainly willing to meet or conference by telephone in an attempt to work out an agreed solution. Please contact my (Allmon's) office, if you have any questions or if you wish to discuss any aspect of this notice or to discuss options for resolving the issues described in this notice.

Sincerely,

A handwritten signature in black ink that reads "Eric Allmon". The signature is fluid and cursive, with the first name "Eric" being more prominent than the last name "Allmon".

Eric Allmon

**COPIES TO:**

Ms. Gina McCarthy  
Administrator, U.S. EPA  
Ariel Rios Bldg.  
1200 Pennsylvania Ave NW  
Washington, D.C. 20460

Mr. Ron Curry  
Regional Administrator  
U.S. EPA Region 6  
Regional Administrator's Office  
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